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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,768	02/09/2004	Gregory Ashton	9490	9760

27752 7590 07/12/2005

THE PROCTER & GAMBLE COMPANY
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EXAMINER

HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



Info
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10-774768

EXAMINER

ART UNIT	PAPER
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20050621

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary

Application No.

10/774,768

Applicant(s)

ASHTON ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/22/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the absorbent article comprising a flap handle in the reply filed on 5 May 2005 is acknowledged. The traversal is on the ground(s) that the Office provides no reason for the assertion of generic claim 1 and that the Applicant asserts that the restriction is without merit. This is not found persuasive because the generic claim 1 is drawn to a generic handle for assisting in the application of the absorbent article onto a wearer as stated in the Election requirement of the Office Action dated 5 April 2005. Furthermore the handle is generic because it can comprise the form of a flap (as elected by applicant from figures 2a-2d), a tab (figures 3a-3b), an aperture (not shown in figures) or a loop (not shown in figures).

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 7-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species. Applicant timely traversed the restriction (election) requirement in the reply filed on 5 May 2005.

3. Claims 1-6, 21 and 22 are examined on the merits.

Drawings

4. Figures 1a and 1b should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct

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any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Interpretation

5. The term 'adjacent' in claim 1(c) is given its broadest reasonable standard Merriam-Webster definition of 'not distant, nearby and/or having a common endpoint or border.'
6. The term 'unitary construction' in claim 5 is interpreted to mean a flap made or constructed with at least one layer.
7. The term 'multiple construction' in claim 6 is interpreted to mean a flap made or constructed with more than one layer such as but not limited to a laminate.
8. The term 'kit' in claims 21-22 is interpreted to be a collection comprising more than one element.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-6 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Olson (US 2002/0099353). Regarding claims 1 and 4 Olson discloses absorbent training pant 20 comprising: absorbent chassis 32; at least one side edge/sidewall 36 adjacently disposed to chassis 32; and at least one side panel/flap handle 34 capable of

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positioning the training pant on a wearer disposed adjacent chassis 32 and sidewall 36 (page 7, paragraph 0097, lines 4-5; paragraph 0098, lines 1-3; figures 1 and 2). If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Regarding claim 2 Olson discloses chassis 32 comprises an absorbent assembly 44 interposed between liquid pervious bodyside liner/topsheet 42 that is joined to liquid impervious outer cover/backsheet 40 (page 7, paragraph 0098, lines 5-10 and paragraph 0103, lines 1-2; page 8, paragraph 0110, lines 1-4 and paragraph 0107, lines 1-2).

Regarding claim 3 Olson discloses outer cover/backsheet 40 is composed of a nonwoven fabric (page 8, paragraph 0104, lines 19-20).

Regarding claims 5-6 Olson discloses side panel/flap handle 34 as discussed above with respect to claim 1. Olson further discloses each of the side panels/flaps can include one or more individual distinct pieces of material and therefore comprise unitary and multiple constructions (page 9, paragraph 0118, lines 1-9).

Regarding claim 21 Olson discloses a toilet training pant 20 as discussed above with respect to claim 1. Olson further discloses wetness-indicating graphics that is capable of transitioning an infant to proper toilet use since the graphics provide a visual cue to the infant of when urination has occurred within the training pant (page 8, paragraph 0105, lines 1-13, figure 1). Olson further discloses written instructions in combination with the training pant 20 that forms a kit (page 8, paragraph 0105, lines 14-

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15). If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

10. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Dragoo et al. (US 6,229,061). Dragoo et al. discloses absorbent diaper/training pants 20 comprising containment assembly/chassis 32; at least one extensible side panel/side wall 30 adjacently disposed to chassis 32; and at least one ear flap/handle 62 adjacent chassis 32 capable of assisting the wearer in application of the article 20 (col. 3, ll. 10-14, col. 4, ll. 20-25, col. 4, ll. 1-5, col. 8, ll. 66-col. 9, line 7, figure 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (US 2002/0099353) as applied to claim 1, and further in view of Dragoo et al. (US

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6,229,061). Olson discloses an absorbent article 20 with handle 34 as discussed in rejected claim 1 and a kit as discussed above with respect to claim 21. Olson does not expressly disclose the kit comprises more than one absorbent article or that the handle is readily accessible when positioned in the kit. Dragoo et al. discloses the absorbent diaper/training pants 20 having flap/handle 62 as discussed above with respect to claim 1. Dragoo et al. further discloses a plurality of disposable diapers 20 and inserts 10 packaged in the same package with an easy-opening device 225 on the package, the package thereby forming a kit (col. 12, ll. 39-41, figure 4). The Dragoo et al. handle 62 on diaper 20 is capable of being readily accessible from the kit because the packaging that forms the kit facilitates user gripping of the individual diaper 20 from the package. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Olson to contain the handle capable of being readily accessible and the multiple absorbent articles of Dragoo et al. since both references disclose absorbent articles for transitioning an infant to toilet use with handles for article application.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 572-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

LCH



TATYANA ZALUKAEVA
PRIMARY EXAMINER

